Alabama Funeral Service

STATUTORY LAWS

Title 34 Chapter 13
Code of Alabama, 1975

ALABAMA PRENEED FUNERAL AND CEMETERY ACT OF 2023

October 2023

Section 34-13-11

AUTHORIZING AGENT; RIGHT OF DISPOSITION

(a) A person, who is at least 18 years of age and of sound mind, may enter into a contract to act as authorizing agent and direct the location, manner, and conditions of disposition of deceased remains and arrange for funeral and burial goods and services to be provided upon death. Except as otherwise provided in subsection (b), the right to control the disposition of the remains of a deceased person as an authorizing agent, including the location, manner, and conditions of disposition and arrangements for funeral and burial goods and services to be provided, shall vest in the following persons in the priority listed and the order named, provided the person is at least 18 years of age and of sound mind:

(1) The person designated by the decedent as authorized to direct disposition pursuant to Public Law No. 109-163, Section 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving on active duty in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard.

(2)a. The person designated by the decedent in an affidavit executed in accordance with paragraph b.

b. Any person, at least 18 years of age and of sound mind, may authorize another person to control the disposition of his or her remains pursuant to an affidavit executed before a notary public in substantially the following form:

State of Alabama

County of _____

I, _____ designate _____ to control the disposition of my remains upon my death. I __ have __ have not attached specific directions concerning the disposition of my remains. If specific directions are attached, the designee shall substantially comply with those directions, provided the directions are lawful and there are sufficient resources in my estate to carry out those directions.

Subscribed and sworn to before me this ___ day of the month of _____ of the year _____.

_____(signature of notary public)

(3) The surviving spouse.

(4) The sole surviving child of the decedent or, if there is more than one surviving child, a majority of the surviving children. Less than a majority of the surviving children may be vested with the rights of this section if reasonable efforts have been made to notify all surviving children of the instructions and a majority of the surviving children are not aware of any opposition to the instructions.

(5) The sole surviving grandchild of the decedent or, if there is more than one surviving grandchild, a majority of the surviving grandchildren. Less than a majority of the surviving grandchildren may be vested with the rights of this section if reasonable efforts have been made to notify all surviving grandchildren of the instructions and a majority of the surviving grandchildren are not aware of any opposition to the instructions.

(6) The surviving parent or parents of the decedent. If one surviving parent is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts in locating the absent surviving parent have been unsuccessful.

(7) The surviving sibling of the decedent or, if there is more than one surviving sibling, a majority of the surviving siblings. Less than a majority of the surviving siblings may be vested with the rights and duties of this section if reasonable efforts have been made to notify all surviving siblings of the instructions and a majority of the surviving siblings are not aware of any opposition to the instructions.

(8) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, a majority of the surviving grandparents. Less than a majority of the surviving grandparents may be vested with the rights and duties of this section if reasonable efforts have been made to notify all surviving grandparents of the instructions and a majority of the surviving grandparents are not aware of any opposition to the instructions.

(9) The guardian of the decedent at the time of the death of the decedent, if a guardian had been appointed.

(10) The personal representative of the estate of the decedent.

(11) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(12) The public officer, administrator, or employee responsible for arranging the final disposition of the remains of the decedent if the disposition of the remains is the responsibility of the state or a political subdivision of the state.

(13) Any other person willing to assume the responsibility of acting on and arranging the final disposition of the remains of the decedent, including the funeral director that has

custody of the body, in the absence of any person specified in subdivisions (1) to (12), inclusive. The person shall attest in writing that good faith efforts to contact the persons specified in subdivisions (1) to (12), inclusive, have been unsuccessful.

(b) The right of disposition shall be forfeited and passed to the next qualifying person listed in subsection (a), in any of the following circumstances:

(1) The person is charged with murder or manslaughter in connection with the death of the decedent and the charges are known by the mortician. If the charges against the person are dismissed or the person is acquitted of the charges, the right of disposition shall be reinstated.

(2) The person does not exercise his or her right of disposition within two days after notification of the death of the decedent or within three days after the death of the decedent, whichever is earlier.

(3) If the person is the spouse of the decedent and a petition to dissolve the marriage was pending at the time of death of the decedent.

(4) If the judge of probate court determines, pursuant to subsection (c), that the person entitled to the right of disposition and the decedent were estranged at the time of death. For the purposes of this subdivision, estranged means a physical and emotional separation that has existed for such a period of time that an absence of affection, trust, and regard for the decedent is clearly demonstrated.

(c) Notwithstanding subsections (a) and (b), the judge of probate of the county of residence of the decedent may award the right of disposition to the person the judge of probate determines to be the most fit and appropriate to manage the right of disposition and may make decisions regarding the remains of the decedent if the persons possessing the right of disposition do not agree. If two or more persons who possess an equal right of disposition are not able by majority vote to agree upon the disposition of the remains of the decedent, any of those persons or the funeral establishment with custody of the remains may file a petition asking the judge of probate to make a determination in the matter. In making such a determination, the judge of probate shall consider all of the following:

(1) The reasonableness and practicality of the proposed funeral and disposition arrangements.

(2) The degree of the personal relationship between the decedent and each person possessing a right of disposition.

(3) The financial ability and willingness of each person possessing a right of disposition to pay the cost of the funeral and disposition arrangements.

(4) The convenience and needs of other family members and friends who wish to pay their respects and the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.

(5) The desires of the decedent.

(d) Absent negligence, wantonness, recklessness, or deliberate misconduct in the event of a dispute regarding the right of disposition, a licensee may not be held liable for refusing to accept remains, for interring, or for otherwise disposing of the remains of a decedent or for completing arrangements for the final disposition of remains unless and until the licensee receives an order from the judge of probate, or other written agreement signed by all persons possessing a right of disposition, regarding the final disposition of the remains. If a licensee retains remains for final disposition during a disagreement, the licensee may embalm or refrigerate and shelter the body, or both, to preserve the body pending the final decision of the judge of probate. The licensee may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition cost. If a licensee files a petition pursuant to subsection (c), the licensee may add any associated legal fees and court costs to the cost of final disposition. This section may not be construed to require or impose a duty upon a licensee to bring an action pursuant to this section. A licensee and its employees may not be held criminally or civilly liable for not bringing an action pursuant to this section.

(e) Except to the degree that it may be considered by the judge of probate pursuant to subdivision (3) of subsection (c), the fact that a person has paid or has agreed to pay for all or a part of funeral and final disposition arrangements does not give that person a greater voice in right of disposition decisions than he or she would have had otherwise. The personal representative of the estate of a decedent, by virtue of being the personal representative, does not have a greater voice in right of disposition decisions than he or she would have had otherwise.

(Act 2002-239, p. 498, §3; Act 2010-701, p. 1699, §1; Act 2011-623, p. 1439, §1; Act 2017-433, §1; Act 2022-339, §1 .)